



General Assembly

February Session, 2004

Amendment

LCO No. 4099

HB0566904099HDO

Offered by:

REP. FELTMAN, 6th Dist.

To: Subst. House Bill No. 5669

File No. 504

Cal. No. 355

(As Amended)

"AN ACT CONCERNING MEDICAL MALPRACTICE INSURANCE REFORM."

1 Strike subsection (a) of section 2 in its entirety and insert the
2 following in lieu thereof:

3 "(a) No civil action or apportionment complaint shall be filed to
4 recover damages resulting from personal injury or wrongful death
5 occurring on or after October 1, 1987, whether in tort or in contract, in
6 which it is alleged that such injury or death resulted from the
7 negligence of a health care provider, unless the attorney or party filing
8 the action or apportionment complaint has made a reasonable inquiry
9 as permitted by the circumstances to determine that there are grounds
10 for a good faith belief that there has been negligence in the care or
11 treatment of the claimant. The complaint, [or] initial pleading or
12 apportionment complaint shall contain a certificate of the attorney or
13 party filing the action or apportionment complaint that such
14 reasonable inquiry gave rise to a good faith belief that grounds exist

15 for an action against each named defendant or for an apportionment
16 complaint against each named apportionment defendant. [For the
17 purposes of this section, such good faith may be shown to exist if the
18 claimant or his attorney has received a written opinion, which shall not
19 be subject to discovery by any party except for questioning the validity
20 of the certificate,] To show the existence of such good faith, the
21 claimant or such claimant's attorney, and any apportionment
22 complainant or such apportionment complainant's attorney, shall
23 obtain a written and signed opinion of a similar health care provider,
24 as defined in section 52-184c, which similar health care provider shall
25 be selected pursuant to the provisions of said section, that there
26 appears to be evidence of medical negligence and includes a detailed
27 basis for the formation of such opinion. Such written opinion shall not
28 be subject to discovery by any party except for questioning the validity
29 of the certificate or upon order of the court acting upon its own
30 initiative. The claimant or such claimant's attorney, and any
31 apportionment complainant or such apportionment complainant's
32 attorney, shall retain the original written opinion and shall attach a
33 copy of such written opinion, with the name and signature of the
34 similar health care provider expunged, to such certificate. The similar
35 health care provider who provides such written opinion shall not,
36 without a showing of malice, be personally liable for any damages to
37 the defendant health care provider by reason of having provided such
38 written opinion. In addition to such written opinion, the court may
39 consider other factors with regard to the existence of good faith. If the
40 court determines, after the completion of discovery, that such
41 certificate was not made in good faith and that no justiciable issue was
42 presented against a health care provider that fully cooperated in
43 providing informal discovery, the court upon motion or upon its own
44 initiative shall impose upon the person who signed such certificate or a
45 represented party, or both, an appropriate sanction which [may] shall
46 (1) include an order to pay to the other party or parties the amount of
47 the reasonable expenses incurred because of the filing of the pleading,
48 motion or other paper, [including] (2) a reasonable attorney's fee, and
49 (3) an order to pay to the Tobacco and Health Trust Fund, as provided

50 in subsection (c) of section 4-28e, as amended by this act, an amount
51 not less than the amount paid by the claimant or such claimant's
52 attorney for preparation of such written opinion. The court may also
53 submit the matter to the appropriate authority for disciplinary review
54 of the attorney if the claimant's attorney or apportionment
55 complainant's attorney submitted the certificate."